HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SRI JUSTICE G.V. SEETHAPATHY

WRIT PETITION No. 14321 OF 2005

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Between:

State of Andhra Pradesh, rep. by its
Secretary to Government, I & CAD
Department, Secretariat, Hyderabad

……Petitioner

And

Sri T.B. Ravi

……Respondents

:: ORDER ::

Counsel for the Petitioner : Government Pleader for Services - II

Counsel for the Respondent : Sri T. Surya Karan Reddy

Dated: 27-06-2006

Per G.S. SINGHVI, CJ

This petition is directed against order dated 18-11-2004 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal') in O.A.No.452 of 2003 filed by Sri T.B. Ravi (respondent herein) for quashing G.O.Ms.No.89, Irrigation and Command Area Development (CAD.SER.II.1) Department, dated 16-5-002 and Memo No.22429/CAD.Ser.II.1/ 02-2, dated 18-9-2002.

The Facts:

While he was posted as Deputy Executive Engineer at D.C. Sub-Division, Dharmavaram, the State Government vide Memo dated 21-11-1997 initiated departmental enquiry against the respondent on the following charges:

"Charges:

You are incharge of the Sub-Division from 3-5-94 to 3-5-95. During your incumbency, you are incharge of the work of CBR and check measured the following work bills.

Bill No. & Date	Total amount
LSIII & Part dt.8-12/94	Rs.2,44,48,479/-
LSIV & Part dt.4-1-94	Rs.4,93,34,737/-

i) There is vast difference between the levels recorded in the placement register, and recorded in the respective ledger prepared for work bills lead to over payment.

ii) Allowed conveyance of flaky and stony spoil with shorter lead for casing section which caused for bad quality of work.

iii) The thickness of the revetment on U/s. laid is less than 0.45 M as specified in the approved drawings.

iv) The masonry for training wall constructed during your period is not to the standards, as thereby leading to extensive cracks.

v) The thickness of the face concrete laid was 0.45 mtr. As against 0.75 mtrs proposed in the approved drawings.

vi) The dowel bars provided were not as per the specifications provided in the drawings.

vii) The withheld amounts deducted in the running bills are 3½ % as against to 7½ % proposed in the agreement leads to unauthorized aid to the contractor.

viii) You have neither obtained the Bank guarantee for Rs.26,03,549/- nor effected the recovery in running bills

even after pin-pointing by the PAO, Cuddapah in his Lr.No. dt.28-11-94, which lead to the unauthorized aid to the contractor."

After conducting detailed enquiry, the enquiry officer submitted report dated 3-1-2001 with the finding that charges No.2 and 4 have been proved against the delinquent (respondent herein). A copy of the enquiry report was supplied to the respondent. He submitted his representation dated 25-4-2001. After considering the same, the State Government, vide G.O.Ms.No.89, dated 16-5-2002, imposed penalty of stoppage of three annual grade increments with cumulative effect on the respondent. The review petition filed by him was rejected by the State Government, vide Memo dated 18-9-2002.

The respondent challenged G.O.Ms.No.89 dated 16-5-2002 and Memo dated 18-9-2002 by filing an application under Section 19 of the Administrative Tribunals Act, 1985 (for short 'the Act'), which was registered as O.A.No.452 of 2003. He pleaded that the enquiry proceedings were vitiated due to violation of the rules of natural justice because he has not been served with the imputations of misconduct in respect of charge No.2. He further pleaded that the findings recorded by the enquiry officer in respect of charges No.2 and 4 were not based on any legally admissible evidence and, therefore, the order of punishment is liable to be nullified. Another plea taken by the respondent was that in view of the exoneration of Assistant Engineer, who was directly lookingafter the work relating to construction of training wall, the enquiry officer could not have held him guilty.

The Tribunal vide its order dated 18-11-2004 allowed the application filed by the respondent and quashed the order of punishment with the direction that the case be re-examined with reference to the relevant material and the explanation furnished by the applicant (respondent herein). The operative part of the Tribunal's order reads as under:

"9. In view of the above, this is a fit case to be remanded back to the respondent herein for re-examination of the case with

reference to the relevant material on record and duly considering the explanation of the applicant and other such material that might have been placed by the applicant before the authorities and to pass appropriate orders in the matter within the time framed. Therefore, while setting aside the order of punishment issued in G.O.Ms.No.89, Irrigation Department, dated 16-5-2002, the case is remanded back to the respondent to re-examine the matter and to pass appropriate orders in accordance with rules. The OA is disposed of accordingly."

The petitioner has questioned the legality of the impugned order by asserting that in exercise of the power vested in it under Section 19 read with Section 14 of the Act, the Tribunal cannot sit in appeal on the finding of the disciplinary authority. In regard to charge No.2, the petitioner has averred that imputations of misconduct had been served on the respondent vide Government Memo No.33164/ CAD Ser.II-1/97-46, dated 15-11-1999 wherein it was clearly stated that the soil was transported from other than borrow area specified in the agreement and whereas the agreement specified lead for borrows area of 4 km., the execution was from area of distance of 1 km.

We have heard learned Government Pleader and Sri T. Surya Karan Reddy, Advocate appearing for the respondent. In our opinion, the order under challenge does not suffer from any jurisdictional infirmity or an error of law apparent on the face of the record warranting interference by this Court under Article 226 of the Constitution of India except insofar as observation made by the Tribunal on the issue of supply of imputations of misconduct in respect of charge No.2.

It is well settled that in exercise of the jurisdiction under Article 226 of the Constitution, the High Court can issue a writ of certiorari against an order passed by the Subordinate Court or Tribunal or a quasi-judicial authority if the same is without jurisdiction or is in excess of the jurisdiction or is violative of the rules of natural justice or is vitiated by an error of law apparent on the face of the record. To put it

differently, the High Court can issue a writ of certiorari if it is found that the order under challenge has been made by the Court, Tribunal or quasi-judicial which did not have the jurisdiction to pass such order or where such Court, Tribunal or Authority has failed to exercise the jurisdiction vested in it or where the action complained of has been taken in disregard of the rules of natural justice. A writ of certiorari can also be issued if it is shown that while passing the order under challenge the Subordinate Court, Tribunal or quasi-judicial authority ignored legally admissible evidence or took into consideration inadmissible evidence or overlooked relevant material or the order is based on extraneous consideration/ factors. However, a writ court cannot sit in appeal over the judgment of the Subordinate Court, Tribunal or quasi-judicial authority and interfere with the findings and conclusions recorded by such Court, Tribunal or Authority merely because on a re-appreciation of evidence different finding or conclusion is possible. The writ court cannot go into sufficiency and adequacy of evidence which may have been relied by the Subordinate Court, Tribunal or quasi-judicial authority for reaching a particular finding or conclusion.

In **Syed Yakoob v. K.S. Radhakrishnan**[1] the Supreme Court considered the scope of the High Courts' power to issue a writ of certiorari and held as under:

i) A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.

ii) The jurisdiction of High Court to issue a writ of

certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

iii) A finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court.

In **Surya Dev Rai v. Ram Chander Rai**[2] the Supreme Court noted the history of the development of High Court's jurisdiction to issue writs, orders or directions under Articles 226 and 227 of the Constitution of India and laid down the following propositions:

1) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there-against and entertaining a petition

invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

2) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

3) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

4) The parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But

> there may be cases where “a stitch in time would save nine”. At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge.

If the impugned order is scrutinized in the light of the above noted limitations on the scope of High Court’s power of judicial review, it is not possible to find any fault with the direction given by the Tribunal for re-examination of the disciplinary action taken against the respondent. Learned Government Pleader could not put forward any tangible argument to assail the view taken by the Tribunal that in the face of finding recorded by the enquiry officer that the Assistant Engineer who had supervised the work was not guilty of the charge relating to construction of training wall, the respondent cannot be held guilty of that charge. Admittedly, the respondent was only check measuring authority and the actual work was executed under the supervision and control of the Assistant Engineer. Therefore, when the charge was not found proved against the officer who was directly responsible for execution of the work, the respondent could not have been held guilty of supervisory negligence.

However, we find some merit in the petitioner’s criticism to the observation made by the Tribunal in regard to charge No.2. In the opinion of the learned Member of the Tribunal, charge No.2 was quite vague and non-supply of the imputations of misconduct in relation to that charge was fatal to the finding recorded by the enquiry officer. In the first place, it is to be noted that the observation made by the Tribunal in regard to non-supply of imputations of misconduct is factually incorrect inasmuch as the imputations of misconduct had, in fact, been served on the respondent vide Government Memo dated 15-11-1999. Therefore, it was not correct on the part of the Tribunal to criticize the action taken by the disciplinary authority on the premise that reasonable opportunity had not been given to the respondent.

We are further of the view that even if substance of the imputations

of misconduct in relation to charge No.2 had not been supplied to the respondent as per the requirement of Rule 20 (3)(i) of Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991, the same could not, by itself, be treated as fatal to the findings recorded by the enquiry officer. Such a procedural irregularity in the conduct of departmental enquiry is not sufficient to invalidate the order of punishment unless the delinquent specifically pleads and proves that the irregularity has prejudiced his defence and the Court or Tribunal is convinced that the employee's cause had been prejudiced – **Managing Director, ECIL v. B. Karunakar**[3].

From the pleadings of the original application instituted by the respondent and the order under challenge, it is not discernible whether the respondent had raised the plea of prejudice and produced some evidence to show that he was handicapped in defending himself on account of the alleged non-supply of the substance of imputations of misconduct in relation to charge No.2. Therefore, the observations made by the Tribunal in regard to charge No.2 are liable to be set aside.

In the result, the writ petition is dismissed subject to the rider that insofar as charge No.2 is concerned, the Tribunal's observations will be deemed to have been obliterated. As a sequel to this, the competent authority shall now reconsider the entire matter and pass appropriate order without taking into consideration the finding recorded by the enquiry officer on charge No.4. We hope and trust that the competent authority will pass appropriate order within a period of three months from the date of receipt of copy of this order.

G.S.SINGHVI, CJ

G.V. SEETHAPATHY, J

27-06-2006
svs / ks

[1] AIR 1964 SC 477

[2] AIR 2003 SC 3044

[3] JT 1993 (6) SC 1